BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

COMMENTS OF TELIGENT, INC.

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SUMMARY

Telephone wiring that extends within a multi-tenant building to individual tenants is often controlled by the incumbent local exchange carrier. The maintenance of that control allows the incumbent to impede competition by requiring that a facilities-based CLEC either duplicate the incumbent's intra-building wiring or attempt to persuade the ILEC to permit access to its intra-building wire on a reasonable basis. Duplication of these facilities is needlessly expensive and the terms the ILECs insist on for access to their wire is, more often than not, unreasonable. Moreover, some building owners perceive inconvenience and expense attending duplicate construction, sometimes inducing them to deny CLEC access to the building altogether.

To mitigate ILEC control over these essential facilities, the Commission should designate the minimum point of entry as the demarcation point in all commercial and residential multi-tenant buildings. Barring mandatory location of the demarcation point at the minimum point of entry, the Commission should require incumbent LECs to offer, as an unbundled network element, access to intra-building wiring (such as vertical and horizontal riser cables) in those multi-tenant buildings in which the demarcation point is not located at the minimum point of entry. Identifying intra-building wiring as a network element that must be offered on an unbundled basis is consistent with the necessary and impair

standard discussed in the Supreme Court's Iowa Utilities Board decision.

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Teligent, Inc. ("Teligent") hereby submits its Comments in the above-captioned proceeding.[1]

Teligent participated in the development of the positions set forth in the comprehensive comments filed this same day by the Association for Local Telecommunications Services ("ALTS") on the definition of "necessary and impair" and the standards used to apply that definition. As a result, Teligent will not reiterate the positions set forth in ALTS' comments, but incorporates them herein by reference and adopts them as its own.[2]

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, *Second Further Notice of Proposed Rulemaking*, FCC 99-70 (rel. April 16, 1999)("Second FNPRM").

[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between

Through their control over existing networks, Bell Operating Companies ("BOCs") and other incumbent local exchange carriers ("ILECs"), to a large degree, control telecommunications carrier access to consumers. Nowhere is this more evident than in multi-tenant environments ("MTEs").[3] There continue to exist anticompetitive incentives for ILECs to impede the provision of competitive telecommunications services by other telecommunications carriers. The ILECs' control over bottleneck facilities, particularly the "last hundred feet" of building wiring in MTEs, reduces the economic ability of their competitors to provide telecommunications services competitively. Ultimately, this ILEC control hinders the Commission's efforts to promote the competitive availability of telecommunications services.

The Commission should designate the minimum point of entry ("MPOE") as the demarcation point in all commercial and residential MTEs. The cost and complexity of rewiring existing buildings -- some stretching many stories high -- can add

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Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, *Comments of the Association for Local Telecommunications Services*, Sections I, II, III and IV(B)(2)(filed May 26, 1999).

[3] Teligent uses this term in a manner synonymous with the term multiunit premises, as defined by the Commission. The Commission's definition of multiunit premises includes both residential and commercial structures. See 47 C.F.R. § 68.3 ("Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.").

thousands of dollars to the cost of serving just one customer in an MTE. Unlike an ILEC that performs such installations during building construction for every floor and traditionally has been given free access to such wiring thereafter, competitors must often deal with myriad hurdles, both in time and money, in drilling through floors and cabling elevator shafts during and after business hours. Just like that portion of a loop connecting an ILEC switch to a building, existing risers give incumbents a decided advantage in cost and time-to-service.

Where the demarcation point is not located at the MPOE, facilities-based carriers, unlike carriers relying on resale or UNE strategies -- must incur the costs and complexities of completely rewiring buildings, attempt to persuade the ILEC to allow access to its intra-building wiring, or forego their facilities-based offerings entirely and instead rely on the ILEC (and its network costs and limitations) to serve customers on a resale or UNE basis, thereby undermining one of the chief benefits to competition of facilities-based strategies. The most effective way to eliminate this disincentive to facilities-based competition is to designate the MPOE as the inside wire demarcation point for all MTEs. By doing so, the Commission will ensure that all carriers will have equal access to MTE risers. The severe disparity in costs and access between incumbents and new entrants would be greatly reduced.

Barring mandatory location of the demarcation point at the MPOE, the Commission should require ILECs to offer, as an unbundled network element, access to intra-MTE wiring[4] (such as vertical and horizontal riser cables) in those MTEs in which the demarcation point is not located at the MPOE.

As illustrated by the charts on the following pages, where the inside wire demarcation point is not located at an MTE's MPOE, the ILEC's network control extends inside the building.

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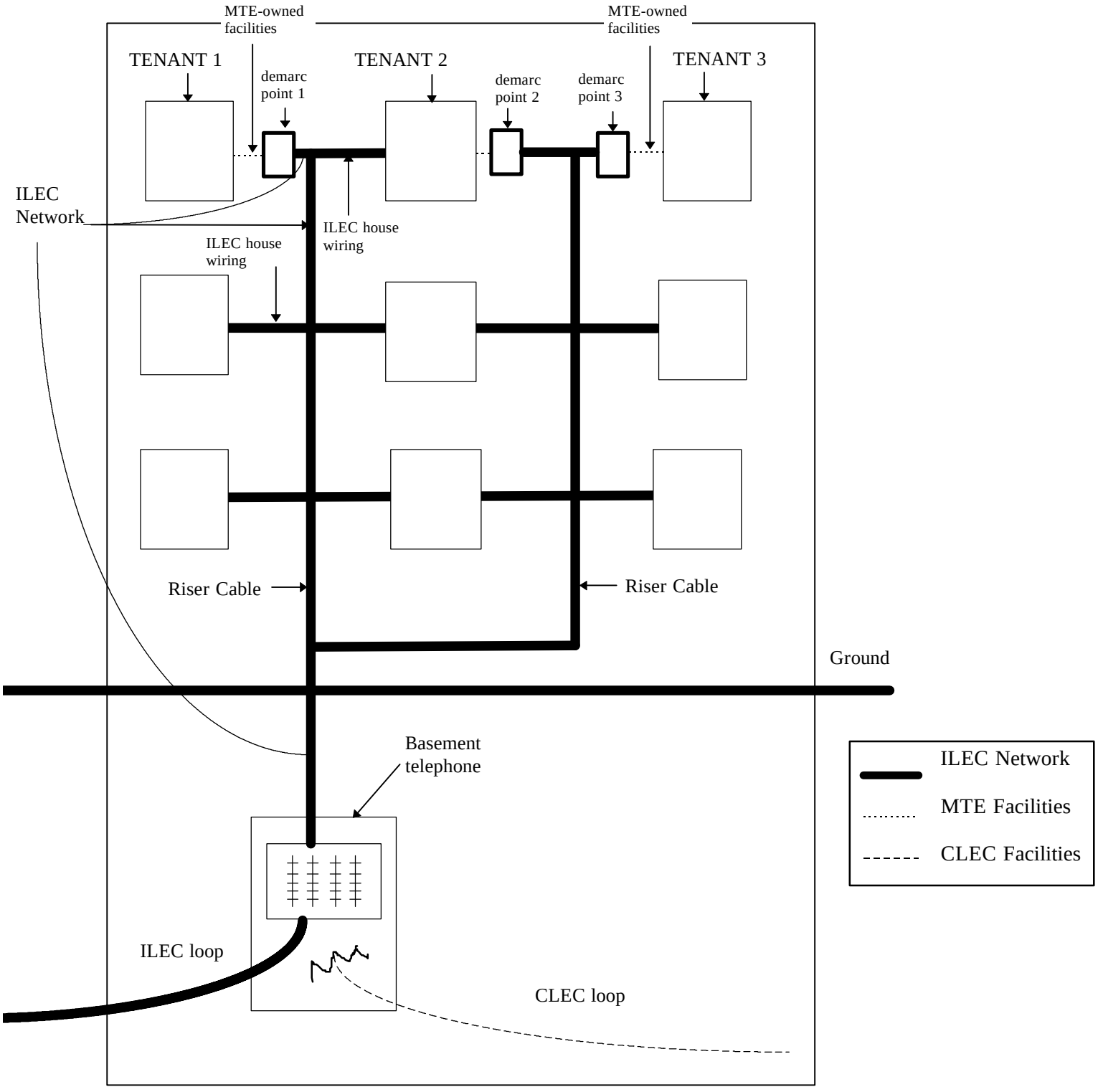
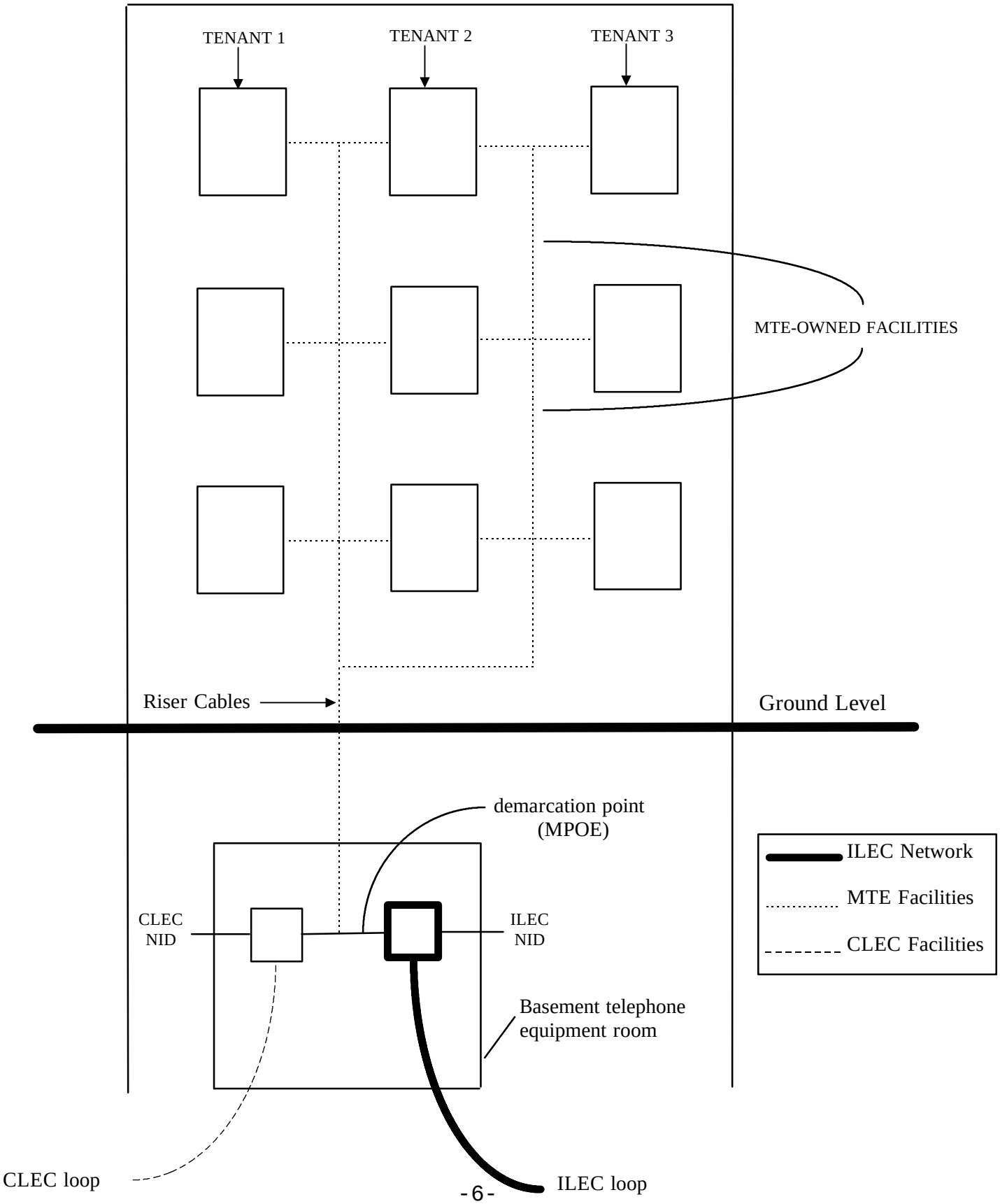
[4] Teligent deliberately does not restrict its discussion to "inside wire." The term "inside wire" occasionally operates in some fora as a term of art that might exclude the wiring to which Teligent and other CLECs must have access. Inside wire is defined by the Commission as "the customer premises portion of the telephone plant that connects customer premises equipment to the public switched telephone network and to other CPE." Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, CC Docket No. 88-57, RM-5643, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11897 at ¶ 1 (1997). Given that most intra-building wiring is not located on the "customer premises," Teligent refrains from limiting its discussion to "inside wire" as such a limitation might be interpreted to exclude access to the wiring within a building not located on the customer premises -- the lion's share of the wiring to which Teligent and other CLECs must have access. The definition of "inside wire" is used and applied loosely by various fora and, depending upon the context in which it is used, it sometimes is assumed to include wiring within a multi-tenant building that is not located on the customer premises. Nevertheless, to be precise, Teligent deliberately employs the more comprehensive terms "intra-building wiring" or "intra-MTE wiring" herein to encompass both inside wiring (as strictly defined by the Commission) and telephone wiring within a building that is not located on the customer premises (such as vertical and horizontal riser cables).

MTE IN WHICH THE DEMARCATION POINT IS NOT LOCATED AT THE MPOE



MTE IN WHICH THE DEMARCATION POINT IS LOCATED AT THE MPOE



The network interface device ("NID") is often located at the demarcation point(s) within an MTE. The Commission observed that

> [w]hen a competitor deploys its own loops, the competitor must be able to connect its loops to customers' inside wiring in order to provide competing service, especially in multi-tenant buildings. In many cases, inside wiring is connected to the incumbent LEC's loop plant at the NID. In order to provide service, a competitor must have access to this facility.[5]

However, when the NID/demarcation point is located at individual customer premises (i.e., on each floor of a multi-story building or at each individual office or residence within a building), access to that NID requires duplicating the ILEC's in-building network -- an option that some MTE owners understandably prefer to avoid when a less invasive option is readily available -- or paying the ILEC a monopolist's fee and being hostage to it for obtaining access to intra-building wiring. It is access to this in-building wiring on the network side of the demarcation point that is critical to competition.

Some competitive carriers may obtain access to this ILEC-owned in-building wiring by leasing unbundled loops from the ILEC. However, fully facilities-based carriers, such as Teligent, are now able to bring their own facilities all the way to a customer's building. A requirement that such carriers lease

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[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 at ¶ 392 (1996)("Local Competition Order").

an entire ILEC loop in order to gain access to intra-MTE wiring is wasteful and needlessly expensive, discouraging facilities-based entry strategies.[6]

Short of moving the demarcation point to the minimum point of entry in all MTEs (so that the ILEC network does not extend inside a multi-tenant environment), unbundling of MTE risers on the ILEC's side of the demarcation point offers an alternative. Specifically, where the demarcation point is not located at the MPOE of an MTE, the Commission should: (1) expressly require ILEC unbundling of intra-MTE wiring (vertical and horizontal risers) from the MPOE to the existing demarcation point (where the NID is typically, although not always, located); (2) encourage States to determine cost-based rates for such risers; and, (3) most importantly, permit competing carriers to access such unbundled risers without the discriminatory delays and costs imposed by dispatching and coordinating with ILEC personnel.

Providing unbundled access to incumbent-controlled risers eliminates discrimination only if the costs of such access (in time and money) approximate those of the incumbents. Moreover, even assuming reasonable cost-based charges for use of the risers

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[6] In the Local Competition Order, the Commission noted its belief "that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient." Id. at ¶ 390.

themselves, the delays and costs of coordinating with the ILEC, particularly with regard to dispatching ILEC personnel, competitively disadvantages new entrants to such an extent that rewiring an MTE, with all its problems, may often be more attractive. In addition, reliance on ILEC coordination can result in intolerable delays for consumers to switch providers.[7] Thus, if the Commission were to pursue unbundled access to risers, it should also provide for competitor access to the wiring blocks at the MPOE of an MTE without the necessity of ILEC personnel being present.[8]

Such unescorted access already occurs in some MTEs in which the demarcation point is established at the MPOE without compromising the integrity of the network. Moreover, any concerns over competitor access to ILEC network components could be addressed contractually through the imposition of industry-accepted technical standards or certification of technicians. Finally, the ILEC would receive payment for use of its intra-building wiring and would hold competing carriers liable in the unlikely event that problems arose with ILEC facilities or customers as a result of the access.

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[7] For example, one ILEC currently requires up to thirty days to agree to dispatch personnel to the building where the ILEC owns the intra-building wire (because the demarcation point is not located at the MPOE) for converting a customer from the ILEC to the CLEC.

[8] Of course, ILEC personnel would have to be involved if there are no cross-connect facilities at the MPOE.

As a general matter, the Commission has supported implementation of a similar strategy -- subloop unbundling -- as a means of allowing carriers to deploy some portions of loop facilities themselves.[9] Yet, due to technical issues not addressed by advocates of subloop unbundling, the Commission declined to identify feeder,[10] feeder/distribution interface (FDI),[11] and loop distribution[12] components as individual network elements in the Local Competition Order.[13] However, the Commission noted its authority "to identify additional, or perhaps different, unbundling requirements that would apply to incumbent LECs in the future."[14] Indeed, in light of the recent Supreme Court remand and the Second FNPRM's invitation to comment on matters related to intra-building wiring, the immediate opportunity is at hand for the Commission to exercise the authority to identify additional ILEC unbundling requirements.

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9 Local Competition Order at ¶ 390.

10 The loop feeder is a fiber line that carries multiple (multiplexed) signals from a central office to the feeder/distribution interface.

11 The feeder/distribution interface demultiplexes the signals received from the loop feeder and sends them out on separate copper pairs to customers' network interface devices.

12 Loop distribution is comprised of copper pairs running from the feeder/distribution interface to network interface devices.

13 Local Competition Order at ¶ 391.

14 Id. at ¶ 246.

The proposed unbundling requirement satisfies the standards considered by the Commission pursuant to Sections 251(c)(3)[15] and 251(d)(2)[16] in identifying unbundled network elements. Namely, as explained above, the failure to provide such access impairs the ability of requesting telecommunications carriers to provide competitive service to end users in MTEs. Moreover, due to the exorbitant expense and complexity involved in unnecessarily duplicating intra-building wiring, the proposed unbundling requirement is necessary. Finally, as demonstrated above, the proposed requirement is technically feasible and does not involve access to elements of a proprietary nature.[17]

In the Local Competition proceeding, space constraints and other concerns were raised that applied to ILEC equipment in the field as distinct from telephone equipment closets and riser space within buildings. Teligent addresses only the latter circumstance and notes that many of the concerns raised with respect to field equipment are inapplicable to in-building facilities. The unquestionable technical feasibility of access to risers within buildings is perhaps best demonstrated by the fact that ILECs in several States are providing such access already.

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15 47 U.S.C. § 251(c)(3).

16 47 U.S.C. § 251(d)(2).

17 Teligent has not encountered any ILEC claims that access to unbundled riser cables would involve access to proprietary information.

- BellSouth has offered such unbundled access to requesting telecommunications carriers through interconnection agreements in Georgia, Florida,[18] Kentucky, and Tennessee.

- U S WEST is required to offer to provide such unbundled access to requesting carriers in Nebraska[19] and Oregon.[20]

- The New York Public Service Commission expressly requires the provision of unbundled access to riser cables.[21] The New York Public Service Commission has also required Bell Atlantic to unbundle subloop elements of loop distribution, loop feeder, and loop concentrator/ multiplexer, finding that it would increase CLECs' abilities to "develop a local network with far less reliance on New York Telephone facilities."[22]

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[18] See Issue Identification Workshop for Undocketed Special Project: Access by Telecommunications Companies to Customers in Multi-tenant Environments, Project No. 980000B-SP.

[19] In the Matter of the Commission, on its own motion, seeking to determine appropriate policy regarding access to residents of multiple dwelling units (MDUs) in Nebraska by competitive local exchange telecommunications providers (CLECs), Application No. C-1878/PI-23, *Order Establishing Statewide Policy for MDU Access* (Neb. PSC, entered March 8, 1999).

[20] See Cost of Providing Telecommunications Services, UM 351, *Order No. 96-188* (Ore. PUC, July 19, 1996).

[21] See AT&T Communications of New York, et al. v. New York Telephone Co., Case 95-C-0657; 94-C-0095; 91-C-1174, *Opinion and Order in Phase II*, 1997 N.Y. PUC LEXIS 709 at *106 (NYPSC Dec. 22, 1997).

[22] See AT&T Communications of New York, et al. v. New York Telephone Co., Case 95-C-0657; 94-C-0095; 91-C-1174, *Opinion and Order in Phase II*, 1997 N.Y. PUC LEXIS 709 at *106 (NYPSC Dec. 22, 1997); see also Petition of MCI Telecommunications Corp., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier agreement between MCI and New York Telephone Co., Case 96-C-0787, *Order Requiring Provision of Network Elements*, 1998 WL 138603 at *1-2 (NY PSC, rel. Feb. 13, 1998).

Thus, the technical feasibility of Teligent's request is confirmed and illustrated by the provision of this unbundled access by several different carriers in several different States. Moreover, such access is being provided in MTEs without the space constraints, degradation of service quality, or disruption of service to ILEC and CLEC customers at issue in the Commission's consideration in the Local Competition Order of unbundling subloops in outside plant, versus within MTEs.[23]

[23] See generally Local Competition Order at ¶ 391.

For the foregoing reasons, Teligent respectfully requests the Commission to identify intra-MTE wiring as a network element that incumbent local exchange carriers must offer on an unbundled basis pursuant to Section 251(c)(3).

Respectfully submitted,

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